

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 122

Introduced by Senator Escutia

February 4, 2003

An act to ~~amend Section 17204 of~~ *add Section 17204.6 to the* Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Escutia. Private enforcement actions.

Existing law provides remedies for unfair competition that may be enforced by a governmental agency, including the district attorney, or by a private party acting for the interests of itself, its members, or the general public.

This bill would require ~~a private party bringing~~, *subject to specified exceptions, the court to review attorney's fees in a proposed settlement, compromise, dismissal, or disposition of an unfair competition action to notify the district attorney and to file proof of service of the notification with the court brought by a private party on behalf of the general public.* The bill would ~~preclude the court from awarding any relief until the proof of service has been filed~~ *also specify disgorgement as an available remedy for acts of unfair competition and would set forth principles for joining these actions. The bill would make its provisions contingent upon AB 95 being enacted and becoming effective on or before January 1, 2004.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1.—Section 17204 of the Business and Professions~~

SECTION 1. *Section 17204.6 is added to the Business and Professions Code, to read:*

17204.6. (a) *In a private action for relief brought on behalf of the general public, a court shall review attorney's fees in a proposed settlement, compromise, dismissal, or disposition on the merits of an action brought pursuant to this chapter. An attorney who fails to submit the attorney's fees for review by the court is subject to disciplinary action by the State Bar of California.*

(b) *Subdivision (a) shall not apply to a lawsuit brought by a labor organization or by a representative of a labor organization or by a joint labor management committee established pursuant to the federal Labor Management Corporation Act of 1978 (29 U.S.C. Sec. 175a) or by an established employment or civil rights organization on behalf of employees or the general public. For purposes of this section, an employment or civil rights organization shall be in existence for a minimum of five years in order to qualify for an exemption and have as one of its purposes the vindication of labor, civil, constitutional or human rights.*

(c) *Disgorgement relief is an available remedy under Section 17203. A court shall assure that any disgorgement relief in excess of any restitution paid by a defendant shall be distributed as a fluid recovery or cy pres award, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all Californians.*

(d) (1) *All persons may be joined in one action as defendants if there is asserted against them:*

(A) *Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or*

(B) *A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.*

(2) *It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.*

1 (3) Where the plaintiff is in doubt as to the person from whom
2 he or she is entitled to redress, he or she may join two or more
3 defendants, with the intent that the question as to which, if any, of
4 the defendants is liable, and to what extent, may be determined
5 between the parties.

6 (4) The fact that individual defendants are engaged in the same
7 or similar businesses and are alleged to have violated the same or
8 similar laws or regulations shall not, in itself, constitute a basis for
9 joinder under this chapter.

10 SEC. 2. The provisions of paragraph (4) of subdivision (d) of
11 Section 17204.6 of the Business and Professions Code are
12 declaratory of existing law.

13 SEC. 3. This act shall become effective only if Assembly Bill
14 95 of the 2003–04 Regular Session is enacted and becomes
15 effective on or before January 1, 2004.

16 Code is amended to read:

17 ~~17204. (a) Actions for any relief pursuant to this chapter shall~~
18 ~~be prosecuted exclusively in a court of competent jurisdiction by~~
19 ~~the Attorney General or any district attorney or by any county~~
20 ~~counsel authorized by agreement with the district attorney in~~
21 ~~actions involving violation of a county ordinance, or any city~~
22 ~~attorney of a city, or city and county, having a population in excess~~
23 ~~of 750,000, and, with the consent of the district attorney, by a city~~
24 ~~prosecutor in any city having a full-time city prosecutor or, with~~
25 ~~the consent of the district attorney, by a city attorney in any city and~~
26 ~~county in the name of the people of the State of California upon~~
27 ~~their own complaint or upon the complaint of any board, officer,~~
28 ~~person, corporation or association or by any person acting for the~~
29 ~~interests of itself, its members, or the general public.~~

30 ~~(b) A person acting for the interests of itself, its members, or the~~
31 ~~general public shall serve notice of the action for relief and a copy~~
32 ~~of the complaint within three days of its filing date, on the district~~
33 ~~attorney for the county in which the action is filed. Proof of service~~
34 ~~of the notice and complaint shall be filed with the court. No~~
35 ~~judgment or temporary or permanent relief shall be granted until~~
36 ~~the proof of service is filed with the court.~~